

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4587 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

RAMESH @ BHANGARI BABAJI THAKOR (ZALA)

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR MA BUKHARI, ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/12/1999

ORAL JUDGEMENT

1. The Commissioner of Police, Ahmedabad City, Ahmedabad passed an order of detention on 30-3-1999 in respect of the petitioner in exercise of powers under Section 3(1) of the Gujarat Prevention of Antisocial

Activities Act (for short PASA Act).

2. The grounds of detention reveal that the Detaining Authority took into consideration three prohibition cases registered against the detenu so also the statements of two anonymous witnesses recorded by the sponsoring authority. The Detaining Authority exercised powers under Section 9(2) of the PASA Act and did not disclose the identity of the witnesses on being satisfied that the witnesses had genuine apprehension from the petitioner in respect of their person and properties. The Detaining Authority after considering the possibility of resorting to less drastic alternative remedies came to the conclusion that detention under PASA is the only remedy that can be resorted to to prevent the petitioner from pursuing his antisocial activities which are detrimental to public order.

3. The detenu/petitioner challenges the order of detention on various grounds. Mr. Prajapati, learned advocate appearing for the petitioner has restricted his argument to the fact that the authorities concerned have not considered the representation in time. He submitted that representation was addressed to Home Minister on behalf of the detenu by his advocate on 28-7-1999 and reports of the Forensic Science Laboratory and other police papers in respect of the three registered offences were requested for. He submitted that only two Forensic Science Laboratory reports have been supplied by the Detaining Authority by letter dated 31-8-1999 and this delay would render the continued detention illegal. He relied on the decision of the Apex Court in the case of M. Ahmed Kutty v. Union of India and Another (1990) 2 SCC 1, and submitted that the petition may be allowed.

4. Mr. Bukhari, learned AGP appearing for the respondents has opposed this petition.

He submitted that the representation dated 28-7-1999 was decided by the State Government on 2-8-1999. He submitted further that on that very day, the Detaining Authority was directed to supply copies of the Forensic Science Laboratory report. He states that the copies were supplied by the Detaining Authority on 31-8-1999.

Mr. Bukhari agreed, after verifying from the original file made available to him by the Department, that in the representation the Forensic Science Laboratory reports and 'other police papers' were demanded but only Forensic Science Laboratory reports

have been supplied, for the reason that 'other police papers' is a vague term.

5. Apart from the larger question as to whether the authority was required to supply 'other police papers' as demanded on behalf of the detenu in the representation, the fact remains that even the Authorities concerned deemed it proper to supply Forensic Science Laboratory Reports, and therefore the State Government directed the Detaining Authority to supply the Forensic Science Laboratory reports. The Detaining Authority therefore admittedly supplied two Forensic Science Laboratory reports on 2nd August 1999. The reports were dated 2.9.1998 and 18.5.1999 as per the statements made at the Bar by Mr. Bukhari, learned AGP, on the basis of the file made available to him by the Department.

6. What transpires therefore is that despite the representation being made on 28-7-1999 and despite a direction from the Government dated 2-8-1999 to supply Forensic Science Laboratory reports, the Detaining Authority has not supplied all the Forensic Science Laboratory in respect of offences registered against the detenu and relied upon by the Detaining Authority while passing the order of detention. Thus apart from a delay in supply of copies of the two FSL reports between 2-8-1999 and 31-8-1999 (which delay has remained unexplained) the Detaining Authority did not supply the FSL report in respect of all the three offences though demanded by the detenu and directed by the Government to supply. The Detaining Authority was then again requested for supply of the third report which was supplied on 18-9-1999. The actual delay is therefore between 2-8-1999 and 18-9-1999. The Detaining Authority has filed the affidavit-in-reply. The affidavit-in-reply does not deal with any of these aspects, as to why in the instant case, FSL reports were not given to the detenu when the order of detention was passed. Secondly, it does not deal with the question as to why there was delay in supply of documents between 2-8-1999 and 31-8-1999. Thirdly, it does not deal with the question as to why only two FSL reports were supplied on 31-8-1999 although there were three FSL reports in respect of the three cases relied upon by the Detaining Authority. Supply of only two FSL reports on 31-8-1999 and supply of third report on 18-9-1999 has definitely caused a delay in making of a representation by the detenu. The delay has remained unexplained. The right of the detenu of making an effective representation is therefore infringed. There is gross non-compliance of the requirement of Article 22(5) of the Constitution of India, which

requires that the authority making the order has to 'as soon as may be' communicate the grounds of detention and to afford the detenu the 'earliest opportunity' of making a representation against the order. Non-supply of FSL reports initially and then non supply of third report even after a demand being made has infringed the right of the detenu of making an effective representation. The Detaining Authority has failed to provide 'earliest opportunity' to the detenu earliest opportunity which the Detaining Authority was required to provide.

7. At this stage it may be noted that the grounds of detention are to be interpreted as directed to be interpreted by the Apex Court in the case of Sophia Gulam Mohad. Bham v. State of Maharashtra and others (1999) 6 SCC 593. The Apex Court interpreted the word 'grounds' used in clause (5) of Article 22 of the Constitution of India and stated that the word 'grounds' means not only the narration or conclusion of facts but also of the materials on which those facts or conclusion which constitute the grounds are based. The Apex Court also referred to its decision in the case of Prakash Chandra Mehta v. Commissioner and Secretary, Government of Kerala AIR 1986 SC 687 and stated that the word 'grounds' has to receive an interpretation which would keep it meaningfully in tune with contemporary notions.

8. In the instant case, the basic facts and material, namely, the FSL report has not been supplied in time to the detenu though demanded. In this regard a decision in the case of M. Ahmed Kutty (supra) may be profitably referred to. In para 19 it has been observed, "the detenu has therefore the right to be furnished with the grounds of detention along with the documents so referred to or relied on. If there is failure or even delay in furnishing those documents it would amount to denial of right to make an effective representation. This has been settled by a long line of decisions." (emphasis supplied).

The instant case falls in both the categories. Firstly there is failure to supply documents at the time of detention and secondly, there is delay in supply of documents even after a demand is made. Therefore the detenu's right to make an effective representation can be said to have been denied which would render the continued detention illegal.

9. Mr. Bukhari has placed reliance on the decision in the case of Osman Ali Khatki vs. Union of India 1994(1) GLH 512. He submitted that failure to supply the

documents and material which are only casually or passingly referred to or not at all referred in the course of narration of facts in the grounds of detention and are not relied upon by the Detaining Authority in making detention order, would not render the detention order illegal. There can be no dispute about this proposition which has been laid down by the Division Bench of this Court. But it has to be examined whether the document that was demanded by the detenu in the present case, can be said to be a document not relied upon by the Detaining Authority or whether it can be said that it is a material which is only casually or passingly referred to or not even referred to in the narration of the facts in the grounds of detention. A plain look at the grounds of detention makes it clear that the three offences registered against the detenu have been relied upon by the Detaining Authority while arriving at subjective satisfaction regarding the fact of the detenu being a bootlegger and his activities being detrimental to public order. Even the Government has deemed it necessary to supply these documents when it directed the Detaining Authority to supply these documents by letter dated 2-8-1999, and therefore under no circumstances can it be argued on behalf of the respondents that decision in the case of Osman Ali Khatki (supra) would apply to the facts of the present case. That was a case where irrelevant documents not relied upon or not referred were demanded and the court held that the documents which are not referred or which are only casually or passingly referred to but do not form basis of the grounds of detention are not required to be supplied to the detenu and non supply of such documents would not render the detention illegal. In the instant case, therefore, the decision relied upon by Mr. Bukhari and the principle laid down therein will not be applicable. On the contrary it is reflected that relevant documents though in existence were not supplied at the time of detention and even after demand they were not supplied and second reminder was required to be made in the instant case. This has caused delay that has remained unexplained. The delay caused in supply of documents has resulted into delay in making an effective representation by the detenu. It was expected of the Detaining Authority to supply the documents immediately which would have afforded the detenu, the 'earliest opportunity' of making a representation contemplated under article 22(5) of the Constitution of India. This having not been done, the continued detention stands vitiated.

9. The petition therefore deserves to be allowed and same is hereby allowed. The petitioner/detenu Ramesh

Bhangari Babaji Thakore (Zala) therefore be set at liberty forthwith, if not required in any other case. Rule is made absolute. No costs.

(A.L. Dave, J)

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